

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8034 OF 1993

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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ASHOKKUMAR K. PANDEY

VERSUS

PRINCIPAL, KENDRIYA VIDYALAYA & ANR.

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Appearance:

MR DM THAKKAR for the petitioner

MR JD AJMERA for the respondents

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Coram: S.K. Keshote,J

Date of decision:9.7.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, by way of this Special Civil Application, challenges the action of the respondent to terminate his services.

3. The petitioner was working as a teacher in the respondent No.1 - School. Under the order dated 4.8.92, at page No.21 of this Special Civil Application, the petitioner was offered appointment to the post of TGT (S.St.) on a purely adhoc basis at the Kendriya Vidyalaya, Rajkot. This adhoc appointment was subject to one of the conditions that the services of adhoc appointment are terminable without any notice and without any reason being assigned therefore and in any case this appointment will stand terminated five months after he/she joins. It is not in dispute that this period of five months has been completed on 30.1.93. Though in the Special Civil Application the petitioner has stated that it is a case of oral termination but from the document at page 23 of this petition, it is borne out that he was relieved from work on 30.1.93. So it is a case of purely adhoc appointment for a fixed term.

4. The learned counsel for the petitioner contended that the petitioner was working as a teacher in Kendriya Vidyalaya since 1988 and he has been given appointment after his name has been called for from the Employment Exchange Department and as such, his services could not have been terminated. The petitioner further contended that before termination of services of the petitioner, no notice or opportunity of hearing has been given. The petitioner's appointment was a regular appointment and as such it could have been brought to an end only after giving him the notice and opportunity of hearing.

5. From para-3 of the Special Civil Application, it comes out that the petitioner has projected as if he has put in about four years' service barring the artificial breaks given by respondent. From annexure 'A', a copy of the statement filed by the petitioner, it comes out that the petitioner has worked for 89 days for the period from 21.1.88 to 30.3.88 at Kendriya Vidyalaya, Rajkot, as TGT (S.St.). This appointment of the petitioner was adhoc and temporary. In this school, the petitioner was then given purely adhoc and temporary appointment for 38 days as Primary Teacher for the period from 24.3.90 to 30.4.90. Then comes his appointment in this school for 172 days for the period from 11.8.92 to 30.1.93 as TGT (S.St.). In other Kendriya Vidyalayas, the petitioner worked on temporary basis either as a primary teacher or

as TGT (S.St.), the details of this working are as under:

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Working days Period Post School  
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79 4.1.90 Primary Teacher Kendriya  
to Vidyalaya,  
23.3.90 Dhrangadhra

47 9.8.90 " " Kendriya  
to Vidyalaya,  
24.9.90 Viramgam

176 5.10.90 TGT (S.St.) " "  
to  
30.3.91

22 9.4.91 " " " "  
to  
30.4.91

175 29.8.91 " " " "  
to  
20.2.92

57 5.3.92 " " " "  
to  
30.4.92

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6. From the aforesaid statements, it is clear that as and when temporary work of the subject Social Studies was available at a school, the petitioner has been given adhoc-temporary appointment. This purely adhoc appointment has been given so that the study work may not suffer. It is not case of regular substantive appointment because the substantive appointment has to be made on the basis of All India Competition to be held by Kendriya Vidyalaya Sangathan or the Assistant Director. All these appointments have been made by the Principal of the schools. It is true that the name of the petitioner has been called from the Employment Exchange Department, but it is equally true that even purely adhoc appointment has to be made in consonance with the provisions of Articles 14 & 16 of the Constitution. Merely because this appointment has been made by calling the name of the petitioner from Employment Exchange Department, it does not acquire the status of a regular substantive appointment. That can only be done in accordance with

the rules framed by Kendriya Vidyalaya Sangathan or the Regional Director by inviting applications on All India basis. It is not the case here. It is a case of purely adhoc appointment for a fixed term as and when the need has arisen in the school for which the petitioner has been paid. In 1992, applications were invited on All India basis for making selection on the post of PRT/TGT in the Kendriya Vidyalaya. In response to the said advertisement, the petitioner has applied for the post but he was not even called for interview since he was too low in the merit list of eligible candidates so as to come within the criteria decided by the Kendriya Vidyalaya Sangathan. It is not disputed by petitioner that the appointment on the post of PRT/TGT are to be made after inviting applications through open advertisement on centralised basis. So the petitioner was even not called for interview when the Kendriya Vidyalaya Sangathan has undertaken the exercise of making substantive appointments on the post of PRT/TGT. It is settled law that a temporary servant does not become permanent unless he acquires that status by force of any rule or is declared as permanent servant. The petitioner's counsel has failed to point out any rule or regulation from the Kendriya Vidyalaya Sangathan that the petitioner acquired any status of permanent teacher nor he has produced any order whereunder he has been declared permanent teacher of the school.

7. While terminating the services of a temporary teacher, no notice or opportunity of hearing is required to be given. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of Madhya Pradesh Hasta Shilp Vikas Nigam Ltd. v. Devendra Kumar Jain & Ors., reported in 1995(1) SCC 638. In the case of Bhanmati Tapubhai Muliya v. State of Gujarat, reported in 1995(2) GLH 228, (Coram: B.N. Kirpal, C.J. (as he then was) & H.L. Gokhale, J.), the Division Bench of this Court held that where the adhoc appointment for a fixed term has been made, the employee on expiry of the term has no right to continue on the post. This appointment automatically comes to an end and no order of termination is necessary. That was also the case of adhoc appointment and the appointment was for a fixed term. So as the petitioner was only appointed for a fixed term, his appointment automatically came to an end and even no order of termination is required to be made. Much emphasis has been laid by the learned counsel for the petitioner on the point that the petitioner has worked for a considerable long period though there were artificial breaks. In the aforesaid case, the Division Bench of this Court has made reference to the decision of

the Hon'ble Supreme Court in the case of Dr.Arundhati Ajit Pargaonkar v. State of Maharashtra & Anr. (JT 1994(5) SC 378). In that case the appellant therein was appointed after selection on 16th September 1978 and the letter of appointment stated that the appointment was only on a purely temporary basis pending further orders as Lecturer in Dentistry at the B.J. Medical College, Pune from date of taking over charge. The appellant therein worked for about nine years and then her services were terminated. The appellant sought regularization of her services and it was observed by the Hon'ble Supreme Court that eligibility and continuous working for howsoever long periods should not be permitted to overreach the law and the appellant was held not entitled to claim regularization even though she had worked without break for nine years. The case of the petitioner is at much lower pedestal than the case of Dr.Arundhati Ajit Pargaonkar v. State of Maharashtra (supra). In that case, the doctor worked for nine years continuously, i.e. without any break whereas in the present case, the petitioner, many a times, was appointed only on adhoc and temporary basis and even he has not worked for four years continuously. There are breaks of more than a year between some appointments. The petitioner was given appointments on a specific condition that his services are purely adhoc and liable to be terminated without any notice and without assigning any reason. In the case of State of Gujarat & Anr. v. P.J. Kampavat & Ors. (XXXIV(1) : 1993 (1) GLR 848), the Hon'ble Supreme Court held that the persons appointed on a specific condition that their services will be purely temporary and liable to be terminated forthwith without any notice cannot seek any protection. In the present case also the conditions of appointment of the petitioner are very specific and clear and no exception can be taken to it by the petitioner. The appointment of the petitioner comes to an end automatically on expiry of term of appointment and even no order of termination or prior notice is required.

8. In the result, this writ petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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